



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 9, 2024

VIA ECF

The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. William Weiner*,
22 Cr. 19 (PGG)

Dear Judge Gardephe:

The Government writes to request the Court to immediately compel the defense to produce materials that they intend to rely on at trial, which have never been produced to the Government in violation of Federal Rule of Criminal Procedure 16(b).

Pursuant to Rule 16(b)(1)(A), if a defendant “requests disclosure under Rule 16(a)(1)(E) and the government complies,” then the defendant must permit the government to inspect any documents in the defendant’s “possession, custody, or control,” which the defendant “intends to use” in his “case-in-chief at trial.” Fed. R. Crim. P. 16(b)(1)(A). When a defendant “avail[s] himself of the strategy to obtain discovery of the government, he must comply with the requirement for reciprocal discovery.” *United States v. Ryan*, 448 F. Supp. 810, 811 (S.D.N.Y. 1978), *aff’d*, 594 F.2d 853 (2d Cir. 1978). To be sure, a defendant “can forgo discovery of the evidence that the government intends to use in its case-in-chief, and thereby avoid being required to disclose the evidence that [he] intends to use in support of [his] defense.” *United States v. Larkin*, No. 12-cr-319, 2015 WL 4415506, at *5 (D. Nev. July 20, 2015). But Rule 16 “does not allow the defendant to have it both ways”—that is, he “cannot obtain the government’s evidence without disclosing [his] own evidence . . .” *Id.* at *5.

To date, defense counsel has never made a Rule 16(b) disclosure despite the Government’s requests for reciprocal discovery from the beginning of the case. On January 8, 2024, however, the defense produced a preliminary exhibit list to the Government containing numerous documents that have never been produced to the Government in violation of Rule 16(b) (*See* Ex. A (the “Defense Exhibit List”). The Defense Exhibit List includes among other things:

- Text messages among Weiner and others that are not in the Government’s possession and were not produced by the Government as part of discovery, (*see* Ex. A at 2, DX 300-302, 305);

- Multiple email exchanges between the defendant and others appearing to contain privileged materials that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 3, DX 412-219);
- Tax returns for Weiner and Nexray from 2020 and 2021 that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 4, DR 800-803); and
- MRI reports prepared by multiple physicians that are not in the Government's possession and were not produced by the Government as part of discovery, (*see id.* at 5-6, DX 1300-1303).

Moreover, the Defense Exhibit List appears to contemplate an advice of counsel defense given the presence of exhibits containing privileged communications with attorneys. (*See id.* at 3, DX 418 (“2021.07.26 – “Fwd: privileged, Nexray/MRC”); DX 419 (“Emails with and between Counsel regarding Nexray Contracts”)). To the extent that the defendant intends to raise an advice of counsel defense, “the opposing party need not move to compel; instead, the burden is on the ‘party who intends to rely at trial on a good faith defense’ to ‘make a full disclosure during discovery’ and the ‘failure to do so constitutes a waiver of that defense.’” *United States v. Wells Fargo Bank N.A.*, No. 12-CV-7527 JMF, 2015 WL 3999074, at *1 (S.D.N.Y. June 30, 2015) (quoting *Arista Records LLC v. Lime Grp. LLC*, No. 06-CV-5936 (KMW), 2011 WL 1642434, at *2 (S.D.N.Y. Apr. 20, 2011) (internal quotation marks omitted)).

The defense should have produced these materials months ago. As the Court is aware, the grand jury issued a speaking indictment, the Government produced early 3500 and expert reports over a year ago, and the Government has met with counsel multiple times to discuss the facts of the case. The defense cannot claim that they only recently decided to rely on these materials at trial. The defense's failure to produce Rule 16(b) discovery is gamesmanship and improper.

The Government accordingly requests that the Court immediately compel the defense to produce the materials that they intend to rely on at trial. To the extent the defense intends to introduce excerpts of text communications among Weiner and others, the Government requests that the defense produce the entire thread so that the Government can determine whether material communications have been omitted. Similarly, to the extent the defense intends to introduce particular email communications among Weiner and others, the Government requests that the defense produce all email communications about the same subject matter so that the Government

can determine whether material communications have been omitted.

Respectfully submitted,
DAMIAN WILLIAMS
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By: /s/
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Exhibit A

Defendant William Weiner's Exhibit List – January 8, 2024

1. CONTRACTS & CORPORATE RECORDS	
DX 1	Nexray Medical Imaging, P.C. ("Nexray"), Certificate of Incorporation
DX 2	Nexray Certificate of Assumed Name
DX 3	Nexray P.O. Box Receipts
DX 4	Letter from USPS to Nexray
DX 5	Nexray MRC Funding Agreement
DX 6	First Amendment to MRC Funding Agreement
DX 7	Nexray Sublease for Howard Beach
DX 8	Nexray MRI License Agreement
DX 9	First Amendment to Sublease Howard Beach
DX 10	MRI Service Support Agreement with Oxford Instruments Healthcare
DX 11	CT Service Support Agreement with Oxford Instruments Healthcare
DX 12	Oxford Instruments Healthcare Purchase Agreement
DX 13	Valley National Bank Loan Documents
DX 14	Nexray Howard Beach Real Estate Attorney Invoice
DX 15	Nexray Engagement Agreements with Russell Friedman Associates
DX 16	Nexray Howard Beach Lease
DX 17	Novarad Service Agreement
DX 18	Konica Minolta Healthcare Americas, Inc. Service Agreement
DX 19	Philips Medical Capital Equipment Financing Agreement
DX 20	Montefiore Participating Provider Agreement
DX 21	Nexray Bronx Construction Advancement Siemens
DX 22	Website Design Agreement and Invoice
DX 23	Newbridge Capital Leasing Agreement

Defendant William Weiner's Exhibit List – January 8, 2024

DX 24	Professional Credentials for Dr. William Weiner
100. PLEADINGS	
DX 100	Nexray Medical Imaging v. Medical Reimbursement Consultants, 608566/2022 (Nassau County) —Pleadings
DX 101	Liberty Mutual, et al. v. Nexray, et al., 12-cv-5666 (E.D.N.Y.) —Pleadings
DX 102	Haft Superseding Information
200. PHOTOS	
DX 200	Photos of Nexray Clinic
DX 201	Photos of Condominium
300. TEXT MESSAGES	
DX 300	Moriarty-Weiner Text Excerpts (DOJ Production)
DX 301	Decker-Weiner Text Excerpts (DOJ Production)
DX 302	Patel-Weiner Text Excerpts (DOJ Production)
DX 303	Paleocostas-Moriarty Text Excerpts (DOJ Production)
DX 304	Pierre-Weiner Text Excerpts (DOJ Production)
DX 305	Weiner-Weiner Text Excerpts (DOJ Production)
400/500. EMAILS	
DX 400	2019.3.14 – “Fwd: Doc 1”
DX 401	2019.03.15 – “Re: Amendment to Finance Agreement” and attachment “signature page Amended MRC agreement”
DX 402	2019.11.08 – “(no subject)” and attachment “MSK reports critique”
DX 403	2019.11.11 – “Re: reports”
DX 404	2020.01.06 – “Fwd: reports”
DX 405	2020.01.06 – “Re: reports”
DX 406	2020.03.04 – “Re: Medical Reimbursement”
DX 407	2020.03.13 – “Re: reports”

Defendant William Weiner's Exhibit List – January 8, 2024

DX 408	2020.06.17 – “Nexray New case” and attachment
DX 409	2020.09.17 – “Re: reports”
DX 410	2021.2.10 – “[External Email] – Nexray Coming in for EUO Today”
DX 411	2021.2.10 – “Re: Cases”
DX 412	2021.02.23 – “Zoom Call for Soul Radiology”
DX 413	2021.02.23 – “Re: Zoom Call for Soul Radiology”
DX 414	2021.02.25 – “Re: Zoom Call for Soul Radiology”
DX 415	2021.02.25 – “Re: Zoom Call for Soul Radiology”
DX 416	2021.03.01 – “Meeting via zoom Nexray MRC and respective attorneys”
DX 417	2021.03.09 – “Fwd:”
DX 418	2021.07.26 – “Fwd: privileged, Nexray/MRC”
DX 419	Emails with and between Counsel regarding Nexray Contracts
600. GRAND JURY & COURT TRANSCRIPTS	
DX 600	Haft Grand Jury Testimony Excerpts (05.08.2021)
DX 601	Haft Grand Jury Testimony Excerpts (07.06.2021)
700. 3500 MATERIAL	
DX 700	Mark Decker 3500 Material
DX 701	Beena Ghazal 3500 Material
DX 702	Barbara Moriarty 3500 Material
DX 703	Gerald Surya 3500 Material
DX 704	Niyati Trivedi 3500 Material
DX 705	Lynn Rodriguez 3500 Material
DX 706	Albert Haft 3500 Material
DX 707	Anthony Rose 3500 Material

Defendant William Weiner's Exhibit List – January 8, 2024

DX 708	Manny Cheng 3500 Material
DX 709	Scott Coyne 3500 Material
DX 710	Marlon Lawes 3500 Material
DX 711	Mark Novick 3500 Material
DX 712	Paul Schneeloch 3500 Material
DX 713	Jim Egner 3500 Material
DX 714	Terrell Roquez 3500 Material
DX 715	Joseph Infusino 3500 Material
DX 716	Valerie Catanzaro 3500 Material
800. TAX RECORDS & DOCUMENTS	
DX 800	Weiner 2020 Tax Return
DX 801	Weiner 2021 Tax Return
DX 802	Nexray 2020 Tax Return
DX 803	Nexray 2021 Tax Return
900. BANK RECORDS	
DX 900	Nexray Checking Account Statements
DX 901	Weiner and Nexray Citibank Accounts and Transactions
DX 902	Valley National Bank Account Information
DX 903	Nexray Deposits and Withdrawals
DX 904	Nexray Citibank Checking Account Statements
DX 905	Nexray Paycheck Protection Program Data
DX 906	Nexray Valley National Bank P&L Previous Year Comparison and Transactions by Account
DX 907	Nexray Valley National Bank Account Statements and Check Images
1000. BILLING AND ACCOUNTING RECORDS	

Defendant William Weiner's Exhibit List – January 8, 2024

DX 1000	Paychex Report (SDNY_01317957-01318322)
DX 1001	Nexray QuickBooks Data
DX 1002	Nexray QuickBooks (A. Haft Version)
DX 1003	Green Bills Billing Analysis
1100. SUMMARY CHARTS	
DX 1100	Weiner Tax Summary
DX 1102	Summary Chart of Financial Data
1200. EXPERT DOCUMENTS	
DX 1200	Expert PowerPoint
DX 1201	Expert PowerPoint
DX 1202	Expert Report (Pukenas)
DX 1203	Expert Report (Zafrin)
DX 1204	Expert Report (Bishop)
DX 1205	The Spine Journal 16 (2016) 42-48
DX 1206	The Spine Journal 17 (2017) 554-561
DX 1207	Heuristics and Cognitive Error in Medical Imaging
DX 1208	Errors, discrepancies and underlying bias in radiology with case examples: a pictorial review
DX 1209	Emy's Story – Summit Brain and Spine
DX1210	Annular Disc Tear – StatPearls – NCBI Bookshelf
DX1211	“Alarmingly high” number of interpretive errors and inconsistencies in MRI examinations
1300. MRI REPORTS & IMAGES	
DX 1300	Moriarty MRI Reports
DX 1301	Novick MRI Report
DX 1302	Patel MRI Reports

Defendant William Weiner's Exhibit List – January 8, 2024

DX 1303	Decker MRI Reports
1400. PUBLIC DOCUMENTS	
DX 1400	Condominium Deed (09.28.2022)
DX 1401	Condominium Deed (12.13.2022)
DX 1402	Assessor Information –Condominium
DX 1403	Condominium Listing
1500. SUBPOENAS & GOV'T CORRESPONDENCE	
DX 1500	2021.03.15 Nexray Medical Imaging Grand Jury Subpoena
DX 1501	2021.08.17 Nexray Medical Imaging Grand Jury Subpoena
DX 1502	2021.08.26 Nexray Medical Imaging Grand Jury Subpoena
DX 1503	2021.09.02 Nexray Medical Imaging Grand Jury Subpoena
DX 1504	2021.10.14 Nexray Medical Imaging Grand Jury Subpoena
DX 1505	2023.12.27 Nexray Medical Imaging Grand Jury Subpoena
DX 1506	Correspondence from Government